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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

PHILLIP GALLEGOS,

Defendant and Appellant.

B289436

(Los Angeles County
Super. Ct. No. BA395486)

ORDER MODIFYING THE
OPINION AND DENYING
PETITION FOR REHEARING
(NO CHANGE IN THE
JUDGMENT)

THE COURT:

The opinion filed in the above-entitled matter on August 1, 2019 is modified.

In the first paragraph on page 3, the following sentence is deleted: “Gallegos and his codefendants shot at three victims, one of whom suffered injuries.”

That sentence is replaced with the following sentence:

Gallegos’s codefendants shot at three victims, one of whom suffered injuries.

This modification does not constitute a change in the judgment.

The petition for rehearing filed by defendant and appellant is denied.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J. JOHNSON, J. BENDIX, J.

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B289436

(Los Angeles County
Super. Ct. No. BA395486)

APPEAL from an order of the Superior Court of
Los Angeles County, Douglas W. Sortino, Judge. Affirmed.

William L. Heyman, under appointment by the Court of
Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler,
Chief Assistant Attorney General, Lance E. Winters, Assistant
Attorney General, Zee Rodriguez, and Daniel C. Chang, Deputy
Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Phillip Gallegos challenges the trial court's denial of his motion to withdraw his plea of no contest. He contends that he established good cause to withdraw the plea, claiming that he never intended to enter a plea of no contest, was intoxicated at the time he entered the plea, and did not know enough about his case to enter into the plea knowingly and intelligently. We affirm.¹

FACTS AND PROCEEDINGS BELOW

An information charged Gallegos and two codefendants with three counts of attempted murder (counts 1, 2, 3), in violation of Penal Code sections 664 and 187, subdivision (a),² and conspiracy to commit murder, in violation of section 182, subd. (a)(1) (count 4). The information further alleged that a principal intentionally discharged a firearm and proximately caused great bodily injury to a victim in committing the attempted murders (§ 12022.53, subds. (c), (d) & (e)(1)), and that Gallegos committed all the charged offenses for the benefit of, at the direction of, and in association with a criminal street gang (§ 186.22, subd. (b)(1)(C)). If convicted on all charges, Gallegos faced a maximum sentence of 96 years to life.

¹ By separate order, defendant's petition for writ of habeas corpus in case No. B290739, being considered concurrently with this appeal, is denied. The petition raises a claim of ineffective assistance of counsel in connection with defendant's plea of no contest.

² Unless otherwise specified, subsequent statutory references are to the Penal Code.

At a preliminary hearing, witnesses testified that in March 2012, Gallegos and two codefendants, all of them members of the Little Valley street gang, drove in Gallegos's car to confront members of a rival gang. Gallegos and his codefendants shot at three victims, one of whom suffered injuries.

In 2016, Gallegos agreed to a plea bargain in which he pleaded no contest to one count of attempted murder and admitted the gang allegation, and in exchange the prosecution agreed to dismiss the remaining charges. Under the terms of the agreement, Gallegos waived all prior credit for time served and received a 15-year sentence. During his plea hearing, the trial court explained the charges against Gallegos, the maximum possible sentence, the terms of the plea agreement, his right to a trial, and the potential immigration and other consequences of pleading no contest. Gallegos responded that he understood. The court found that Gallegos entered the plea freely, knowingly, intelligently and voluntarily, with full knowledge of the consequences.

Approximately eight months later, Gallegos dismissed his retained counsel, William Pitman, and in June 2017 filed a motion to withdraw his plea. In the motion, he alleged that several factors prevented him from entering into the plea agreement knowingly and intelligently, including a lack of time to consider the prosecution's offer and insufficient understanding of the evidence against him.

At the hearing for the motion to withdraw the plea, Gallegos testified that Pitman did not explain the details or ramifications of the plea agreement, nor the advantages and disadvantages of going to trial. Gallegos said he spoke with Pitman for 20 or 30 minutes two days before the trial and

before that only met with him a few times on holidays. According to Gallegos, Pitman never discussed any possible defenses or defense witnesses and refused to hire a private investigator. Gallegos did not have an opportunity to read the police report or preliminary hearing transcripts. He elaborated that he needed to read the transcripts in order to understand the proceedings because he was formerly in special education classes due to his difficulty in understanding verbal communication. Furthermore, he claimed that his judgment was impaired during the time of his plea because he was under the influence of crystal methamphetamine and suffered from sleep deprivation. He acknowledged that he did not mention the sleep deprivation or crystal methamphetamine usage to Pitman at the time. According to Gallegos, he consistently told Pitman that he wanted to go to trial and did not want to accept the plea bargain. He remained silent during the plea hearing only because he did not want to “disrespect the court.”

The trial court required Pitman to testify at the hearing, finding that Gallegos, by filing the plea withdrawal motion, had waived attorney-client privilege with respect to matters relating to the plea agreement. Pitman denied several of Gallegos’s allegations. He testified that he visited Gallegos at least 10 times at jail. Pitman stated that he discussed the case “in its entirety” with Gallegos. In addition, Pitman noted that when he was discussing the case, Gallegos appeared to understand the discussion. Although Pitman stated he did not recall whether he gave Gallegos the preliminary hearing transcript, Pitman discussed with him any important witness statements. Furthermore, Pitman stated that Gallegos did not appear to be

under the influence of any drugs during the plea hearing and did not appear any different than the other times they met.

Although Pitman believed the prosecution's case contained weaknesses, he discussed with Gallegos that there was a risk Gallegos could be convicted and spend the rest of his life in prison if the case proceeded to trial. Pitman stated he had a discussion with Gallegos about the ramifications of the plea. Gallegos vacillated about whether or not to accept the plea bargain, but he did not tell Pitman during the plea hearing that he wanted to go to trial. Shortly after pleading no contest, however, Gallegos told Pitman that he wanted to withdraw his plea.

The trial court denied Gallegos's motion to withdraw his plea. The court found that Gallegos entered into the plea knowingly, intelligently, and voluntarily, with full knowledge of the consequences. Gallegos's claim "that he didn't know what was going on [was] completely not credible." On the basis of the transcript of the plea hearing and Pitman's testimony, the trial court concluded that Gallegos was merely "having second thoughts" about pleading no contest.

DISCUSSION

Gallegos claims that the trial court abused its discretion by denying his motion to withdraw his plea. He argues that he established good cause to withdraw the plea, and that the trial court failed to properly consider his mental condition at the time of the plea, his lack of adequate information about the case, and evidence suggesting that he never meant to plead no contest. We find no merit in Gallegos's contentions.

Under section 1018, a trial court may permit a defendant who is represented by counsel to withdraw a guilty plea upon a showing of “good cause.”³ Good cause exists when “[m]istake, ignorance or any other factor overcom[e] the [defendant’s] exercise of free judgment.” (*People v. Cruz* (1974) 12 Cal.3d 562, 566.) We construe section 1018 liberally, but the defendant must show the facts underlying his claim of good cause by clear and convincing evidence. (*People v. Shaw* (1998) 64 Cal.App.4th 492, 496 (*Shaw*).)

We review a trial court’s denial of a motion to withdraw a plea for abuse of discretion. (*Shaw, supra*, 64 Cal.App.4th at p. 496.) Many of Gallegos’s claims implicitly challenge the trial court’s factual determinations. We review the court’s factual findings for substantial evidence. (*People v. Fairbank* (1997) 16 Cal.4th 1223, 1254 (*Fairbank*).) The trial court is the ultimate judge of credibility regarding witness testimony. (*People v. Caruso* (1959) 174 Cal.App.2d 624, 636 (*Caruso*).) If conflicting inferences can be drawn from the evidence, we must adopt the inference supporting the challenged order. (*People v. Hunt* (1985) 174 Cal.App.3d 95, 104.) Therefore, witness testimony, if believed by the trial court, can only be overturned if incredible on its face, inherently improbable, or physically impossible. (*People v. Watts* (1999) 76 Cal.App.4th 1250, 1259.)

³ Although the statute refers only to the withdrawal of guilty pleas, the same standard applies to the withdrawal of no contest pleas. (See, e.g., *People v. Mickens* (1995) 38 Cal.App.4th 1557, 1561.)

Gallegos claims he could not intelligently plead no contest because he was under the influence of crystal methamphetamine and was sleep deprived during the hearing. Yet he acknowledged that he did not tell Pitman at the time that he was impaired, and Pitman testified that he did not notice anything wrong with Gallegos at the time of the hearing. Furthermore, the same judge who decided Gallegos's plea withdrawal motion presided over the hearing where he pleaded no contest and could personally view his physical condition and demeanor. (See *Fairbank, supra*, 16 Cal.4th at p. 1254.) Substantial evidence supported the court's finding that Gallegos was mentally competent at the time of the hearing.

Next, Gallegos contends that he lacked sufficient information to enter a knowing and intelligent plea. He claims he only met with his counsel infrequently, did not receive a transcript of the preliminary hearing or a copy of the police report, and that Pitman failed to conduct an investigation. Gallegos elaborates that he needed written transcripts because he was a special education student and had difficulty understanding verbal communication. Yet Pitman testified that he met with Gallegos numerous times, including at least 10 visits to Gallegos in jail. Pitman also testified that he discussed the case "in its entirety" with Gallegos, and Pitman stated that Gallegos appeared to understand the discussions.

We infer that the trial court found Pitman's account more credible than Gallegos's. Gallegos argues that we should believe his account because Pitman was testifying from memory about events that occurred over two years past, and presumably had worked on many unrelated matters for other clients in the interim. In making this argument, Gallegos asks us to reweigh

the trial court's implied findings regarding Pitman's testimony. That is not our role. (See *Caruso*, *supra*, 174 Cal.App.2d at p. 636.)

Gallegos contends that he could not intelligently and knowingly plead no contest because he was given only two days to consider the plea bargain and could not consult with his family. But if a defendant has not had enough time to consider a plea bargain, he or his attorney must ask the trial court at the time for more time to consider, not ask later to withdraw the plea. (See *People v. Grey* (1990) 225 Cal.App.3d 1336, 1340, disapproved on another ground by *In re Jordan* (1992) 4 Cal.4th 116, 130, fn. 8.)

Gallegos also claims that he never intended to enter a plea of no contest. He notes that there were weaknesses in the case against him, including that the victims of the shooting could not identify him, that the videos of the shooting apparently did not show the identities of the perpetrators, and that the primary witnesses against him had reasons to lie. In addition, Pitman testified that Gallegos told him shortly after entering the no contest plea that he wished to withdraw it. But Pitman also testified that he explained to Gallegos both the strengths and the weaknesses of the prosecution's case. According to Pitman, Gallegos wavered over accepting the plea agreement, but in the end decided to take the offer. Ultimately, the strongest evidence that Gallegos intended to plead no contest is that he in fact pleaded no contest after the court advised him of his right to a trial. (See *Blackledge v. Allison* (1977) 431 U.S. 63, 74 ["Solemn declarations in open court carry a strong presumption of verity"].) The trial court was not required to credit Gallegos's

uncorroborated claim that he only entered the no contest plea because he did not want to disrespect the court.

DISPOSITION

The trial court's order is affirmed.

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ROTHSCHILD, P. J.

We concur:

JOHNSON, J.

BENDIX, J.